**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF NEW YORK**

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| S & L VITAMINS, INC.,<br><br>Plaintiff,<br><br>- vs. –<br><br>AUSTRALIAN GOLD, INC.,<br><br>Defendant. | CIVIL ACTION NO.<br><br>05-CV-1217 (JS) (MLO) |
| AUSTRALIAN GOLD, INC.,<br><br>Third Party Plaintiff,<br><br>- vs. –<br><br>LARRY SAGARIN AND JOHN DOES 1-10,<br><br>Third Party Defendants. | **SUPPLEMENTAL STATEMENT OF MATERIAL FACTS ABOUT WHICH THERE IS NO DISPUTE PURSUANT TO RULE 56.1** |

Plaintiff S & L Vitamins and Third-Party Defendant Larry Sagarin, by and through their undersigned attorneys and pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1, submit the following supplemental statement of uncontested facts with citations to the record in this matter based on the pleadings, submissions of parties, testimony given in depositions and documents produced in discovery.

## LOCAL RULE 56.1 STATEMENT

| | PROPOSED UNDISPUTED FACT | RECORD SUPPORT |
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| 1 | All Australian Gold Products ("AG Products") sold by S&L Vitamins are genuine. | Aff. Of Sagarin ¶5, Aff. Of Mercadente, ¶5 |
| 2 | Australian Gold does not ensure or guarantee that customers receive training from salons | Sheehan Dep. 37:21-38:8, Hartlieb Dep. 54:14-55:17 |

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| 3 | Not all salons receive training from Australian Gold in the use of AG Products. | Sheehan Dep. 26:7-23 |
| 4 | S&L Vitamins caused its name to be placed on the photographs of AG Products solely in order to prevent others from stealing and using these photographs on third party websites. | Aff. Of Sagarin ¶24, Aff. Of Mercadente ¶24 |
| 5 | S&L Vitamins has been selling AG Products on its website since 2003. | Aff. Of Sagarin ¶2, Aff. Of Mercadente ¶2 |
| 6 | Tanning salons, other than a few chains, are not parties to Australian Gold's distributor contracts. | Sheehan Dep. 37:4-20,, Hartlieb Dep. 50:22-51:9 |
| 7 | At no time has S&L Vitamins operated, owned, controled, managed or represented a tanning salon | Aff. Of Sagarin, ¶11, Aff. Of Mercadente, ¶11 |
| 8 | All transactions between S&L Vitamins and tanning salons involving AG Products are arms length transactions. | Aff. Of Sagarin ¶¶12-14, Aff. Of Mercadente ¶¶12-14, Sheehan Dep. 39:3-40:10, 45:16-51:16 |
| 9 | Yucatan is the only tanning salon which supplies AG Products to S&L Vitamins that Australian Gold has identified as having signed a Premier Salon Agreement. | Aff. Of Coleman ¶2 |
| 10 | The Premier Salon Agreement signed by Yucatan has no restrictions on whom Yucatan can sell AG Products to. | Aff of Coleman, Ex A. |
| 11 | The principal of Yucatan had no knowledge of the terms of the Premier Salon Agreement. | Sheehan Dep. 16:13-19:23 |
| 12 | Australian Gold did not produce any expert report, financial records, evidence of lost sales, or evidence of disruption of its distribution network attributable to S&L Vitamins. | Aff. of Coleman ¶4 |
| 13 | The only financial information disclosed by Australian Gold was a "damages worksheet" which did not have any specific information related to S&L Vitamins. | Aff. of Hartlieb, Ex. B |
| 14 | S&L Vitamins never misrepresented itself or its intention to sell AG Products on the internet to its suppliers. | Aff. of Sagarin ¶15, Aff. of Mercadente ¶15, Sheehan Dep. 39:25-40:11, 56:5-19 |
| 15 | S&L Vitamins has never used any corporate, assumed, or trade name except for Body Source Online, Body Source, S&L Vitamins, Inc., Source | Aff. Of Sagarin ¶16, Aff. of Mercadente ¶16 |

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| | Pharmaceuticals Inc., thesupplenet.com, and drillsandtaps.com. | |
| 16 | All registered copyrights attached to Australian Gold's amended counterclaim refer to the label artwork. | 2$^{nd}$ Am. Ans. & Counterclaims, Exh. B |
| 17 | All registered copyrights that were federally registered in 2005 were first published in April 2004. | 2$^{nd}$ Am. Ans. & Counterclaims, Exh. B |
| 18 | S&L Vitamins' use on its website of photographs of AG Products began in late 2003. | Aff. Of Sagarin ¶23. Aff. Of Mercadente ¶23 |

By: ___/s/__________________
Ronald D. Coleman (RC 3875)

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